

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**



V

**Personal Touch Home Care of Greater Portsmouth Inc**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:43 V employee expenses

**Employer:** Personal Touch Home Care of Greater Portsmouth Inc, 5 Dartmouth Dr,  
Auburn, NH 03038

**Date of Hearing:** December 29, 2015

**Case No.:** 51807

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant originally asserted, through the filing of her wage claim, that she was owed \$2,500 in unpaid employee expenses for a \$50 monthly cell phone reimbursement from 2010 through 2014. She amended her claim to \$1,300 for November 4, 2012 through December 31, 2014, to comply with the thirty-six month statute of limitations.

The employer argued the claimant's position of Market Director did not initially warrant a cell phone reimbursement. They provided her with the office tools necessary to perform her duties. The cell phone reimbursement offered to other positions was based on the data usage to retrieve emails and text messages on a sliding scale of \$20 to \$100 per month. Beginning January 2015, the claimant did use her cell phone to retrieve emails and text messages, which is why they paid the reimbursement for January 2015 through her separation.

The employer offered to settle this matter with the claimant for \$990. The claimant rejected this offer and this hearing followed.

**FINDINGS OF FACT**

The claimant worked for the employer as a Marketing Director from November 2010 through her separation in September 2015.

In August 2015, the claimant had a conversation with other co-workers who were Community Marketing Liasons from a Massachusetts office, in which she discovered that they received a \$50 monthly cell phone allowance from the employer for the use of their personal cell phones.

The claimant inquired with Ms. Burke as to why she did not receive the same reimbursement. Ms. Burke looked into the situation, completed the proper forms, and the claimant received a \$50 allowance for each month of August and September 2015. The claimant asked Ms. Burke why she did not receive any reimbursement prior to August 2015. Again, Ms. Burke looked into the situation and the corporate office determined they would provide a \$50 reimbursement from January 2015 through July 2015. The claimant again asked Ms. Burke if she would be receiving a reimbursement for time before January 2015. Ms. Burke a third time inquired from the corporate office, who stated they would not authorize any more retroactive payments.

RSA 275:49 III requires that the employer make available to employees in writing, or through a posted notice maintained in an accessible place, employment practices and policies regarding the payment of employee expenses. Lab 803.03 (b) requires employers to provide his/her employees with a written or posted detailed description of employment practices and policies as they pertain to paid vacations, holidays, sick leave, bonuses, severance pay, personal days, payment of the employees expenses, pension and all other fringe benefits per RSA 275: 49. Lab 803.03 (f) (6) requires an employer maintain on file a signed copy of the notification.

At no time did the employer notify the claimant that she would receive a cell phone reimbursement as a fringe benefit.

RSA 275:43 V states that the payment of employee expenses, when such benefits are a matter of employment practice or policy, or both, shall be considered wages pursuant to RSA 275:42, III, **when due** [emphasis added].

As the employer never provided notification to the claimant that she would receive an employee expense reimbursement for her cell phone, the employee expense did not become due as wages.

The Hearing Officer finds the claimant failed to prove by a preponderance of the evidence she is due the claimed employee expenses.

### **DECISION**

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as RSA 275:43 V considers the payment of employee expenses to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that she was not paid all employee expenses due, it is hereby ruled that the Wage Claim is invalid.

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Melissa J. Delorey  
Hearing Officer

Date of Decision: January 26, 2016

Original: Claimant  
cc: Employer

MJD/mjd